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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 6300
SEATTLE WA 98104-7092

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JUL 26 2006

OFFICE OF PETITIONS

In re Application of :
Mancuso et al. : DECISION ON PETITION TO
Application No. 09/087,671 : WITHDRAW HOLDING OF
Filed: 29 May, 1998 : ABANDONMENT
Attorney Docket No. 853063.450 :
:

This is a decision on the petition filed on 4 June, 2002,¹ to withdraw the holding of abandonment in the above-identified application.

The Office apologizes for the delay in responding to the petition and regrets any inconvenience to petitioners.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit the issue fee in response to the Notice of Allowance and Fee(s) Due mailed on 31 December, 2001, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on 8 May, 2002.

Petitioners assert that the Notice of Allowance mailed on 31 December, 2001, was never received.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the

¹ A duplicate copy of the petition was filed on 7 March, 2006.

practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioner has submitted a statement from the practitioner, Robert Iannucci, stating that the Office communication was not received by the practitioner, and attesting to the fact that a search of the file jacket indicates that the Office action was not received. Copies of docket records for the above-identified application where the non-received Office action would have been entered had it been received and docketed are attached.

The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The application file is being referred to Technology Center 2600 technical support staff for remailing of the Notice of Allowance and Fee(s) Due. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions